

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Complaint no.** : 615 of 2021  
**First date of hearing:** 04.05.2021  
**Date of decision** : 22.10.2024

Sumedha Bhardwaj  
**Regd. Address:** # 800, Sector 9, Gurugram,  
Haryana

**Complainant**

Versus

M/s Advance India Projects Ltd.  
**Regd. office:** 232B, 4<sup>th</sup> Floor, Okhla  
Industrial Estate, Phase III, New Delhi-  
110020

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairperson**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Sukhbir Yadav (Advocate)  
Sh. M K Dang (Advocate)

**Counsel for Complainant**  
**Counsel for Respondent**

**ORDER**

1. The present complaint dated 01.02.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the

Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"AIPL Joy Street"
2.	Project location	Sector 66, Village Medawas & Badshahpur, Gurugram, Haryana
3.	Project type	Commercial Complex
4.	Application dated	11.01.2018 [pg. 105 of complaint]
5.	Allotment letter	05.06.2018 [pg. 105 of complaint]
6.	Unit No.	SF/SEN-31, 2 <sup>nd</sup> Floor. [pg. 105 of complaint]
7.	Unit Area	375.48 sq. ft. (super area) [pg. 105 of complaint]
8.	Revised unit area	457.75 sq. ft. while offering possession
9.	Increase in area	82.27 sq. ft. (+ 21.91%)
10.	Date of agreement	Not executed
11.	Possession clause	<b>Clause (j) of application form</b> <i>The company shall subject to force majeure conditions proposes to handover possession of the unit on or before December 2022 notified by the company to the authority at the time of registration of the project under the Real Estate</i>

		<i>(Regulation &amp; Development) Act, 2016 and the Haryana Real Estate (Regulation &amp; Development) Rules, 2017 and regulations made thereunder for completion of the project or as may be further revised/approved by the authorities. The completion of the project shall mean grant of occupation certificate for the project.</i> [page 62 of the reply]
12.	Due date of possession	<b>December 2022 + 6 months covid-19 grace period= 30.06.2023</b>
13.	Total sale consideration	Rs. 45,10,668.5/- [As per statement of account dated 01.10.2020 on page no. 151 of complaint]
14.	Amount paid	Rs. 16,52,844.64/- [As per statement of account dated 01.10.2020 on page no. 151 of complaint]
15.	Application for grant of OC	17.07.2020 [pg. 90 of reply]
16.	Occupation certificate	28.09.2020 [pg. 90 of reply]
17.	Intimation of constructive possession	01.10.2020 [pg. 114 of complaint]
18.	Pre termination letter	16.01.2021 [pg. 111 of reply]

**B. Facts of the complaint**

3. The complainants have made the following submissions in the complaint:

- a. The Respondent Company announced the launch of **"AIPL Joystreet"** Project in the year 2008. The COMPLAINANT while searching for an apartment/accommodation were lured by the advertisements /Brochures /sales representatives of the Company to buy a house in their project namely **"AIPL Joystreet"** project at Sector 66, Gurugram Haryana. The agents and officers of the Respondent's Company told the COMPLAINANT about the moonshine reputation of the Company and the agents of the Respondent's Company made huge presentations about the project mentioned above and also assured that they have delivered several projects in the National Capital Region prior to this project. The Respondent handed over one brochure to the Complainant, which projected a very interesting landscaping of the said Project and went on to incite the Complainant to part with their hard-earned money by way of making payments. The Respondent claimed that they have taken all due approvals, sanctions and Government permissions towards development and construction of **"AIPL Joystreet"** Project and after representing through brochures, about the facilities to be provided, the Respondent managed to impress the COMPLAINANT, who then decided to invest their hard-earned money in purchasing the Unit at **"AIPL Joystreet"** project.
- b. The Complainant on various representations and assurances by the Respondent booked a Unit in the project by paying a booking amount of Rs. 5, 00,000.00 vide Cheque no. 000029 dated

10.01.2018 drawn on HDFC Bank, Gurugram, Haryana towards the booking of the said Unit bearing SF/Sen-31 at "AIPL Joystreet" in Sector 66, Gurgaon having super area measuring 375.48 sq. ft. to the respondents.

- c. The Complainant made a payment of Rs. 3,50,00.00 to the Respondent on 28.03.2018 vide Cheque No. 000033 drawn on HDFC Bank, New Delhi and the same was acknowledged by the Respondent vide Receipt No. P/C # 18-05-033726 dated 29.03.2018. The Complainant made a payment of Rs. 4,00,000.00 to the Respondent on 03.05.2018 vide Cheque No. 609620 drawn on SBI, Gurgaon and the same was acknowledged by the Respondent vide Receipt No. P/C # 18-05-033727 dated 03.05.2018.
- d. The Complainant made a payment of Rs. 3,38,810.00 vide Cheque no. 609622 drawn on SBI Gurugram dated 17.05.2018 issued by the Respondent and the same was acknowledged by the Respondent vide receipt no. P/C # 18-05-033728 dated 18.05.2018. The Complainant made a payment of Rs. 946.34 on 29.09.2020 and the same was acknowledged by the Respondent vide receipt no. P/C # 20-09-082290 dated 29.09.2020.
- e. The Complainant made a payment of Rs. 5729.00 on 29.09.2020 and the same was acknowledged by the Respondent vide the statement of accounts. The Complainant made a total payment of Rs 16,52,844.64 against a total payment of Rs. 55,22,484.71 towards the total Basic Sale Price (hereinafter referred to as the BSP), Development Charges (hereinafter referred to as the EDC)/Infrastructure Development Charges (hereinafter referred

to as the IDC), , /IFMS, PLC, of the Unit from 2018 onwards. The Complainant opted for **down payment plan** and made payments promptly and in a timely manner as and when the demand letters were raised by the Respondent and thereafter, the Respondent.

- f. The Complainant made a payment of approximately 90% to 95% of the total consideration towards the total Basic Sale Price (hereinafter referred to as the BSP), Car Parking, External Development Charges (hereinafter referred to as the EDC)/Infrastructure Development Charges (hereinafter referred to as the IDC), Club House Charges, IBMS/IFMS, Power Backup, PLC, HVAT of the Unit from 2008 onwards. The Complainant opted for **(the payment plan is not mentioned on any document)** and made payments promptly and in a timely manner as and when the demand letters were raised by the Respondent and thereafter, the Respondent.
- g. The Respondent Company issued an Allotment Letter dated 05.06.2018 allotting a Flat bearing Unit No. SF/Sen- 31 (hereinafter referred to as '**Unit**') admeasuring 375.48 sq. ft. (super built-up area). From 2018 till the date of delivery of possession, whenever the Complainant went to the office of the Respondent and requested the Respondent to allow them to visit the site, they were denied saying that they do not permit any Buyer/Allottee to visit the site during the construction period. Once the Complainant visited the site and they were not allowed to enter the site. The even after making all payments as per the demand letters sent by the Respondent, did not get the possession as per the time specified in the Buyer's Agreement.

- h. The Complainant contacted the Respondent on several occasions and were regularly in touch with the Respondent. The Respondent was never able to give any satisfactory response to the Complainant regarding the status of the construction and was never definite about the delivery of the possession. That the Project **Joystreet AIPL** is registered under RERA. The registration no. of the project is 157 of 2017. The registration took place on 28.08.2017. The Buyer's agreement is not executed till date. That it is absolutely evident that the Respondent is involved in unethical/unfair practices so as to extract money from the Complainant despite the fact that the project has not been completed and the Respondent Company capriciously involved in demanding money illegally from the Complainant.
- i. The Complainant kept pursuing the matter with the representatives of the Respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction was going on at such a slow pace, but to no avail. That after many follow-ups and reminders, the Offer of Possession was offered to the Complainant on 1.10.2018 by the Respondent.
- j. Before replying to the various demands raised by the Respondent in his offer of possession dated 01.10.2020, the complainant wishes to inform that in the offer of possession sent to the Complainant, many demands, which were never informed at the time of booking, including the demand towards Sinking Fund, Labour cess, Common Area Maintenance charges, Infrastructure Augmentation Charges, Electric Switch in Station and Deposit

Charges and Deposit charges, Sewage/ Storm Water /water connection charge, Electric meter charge, Registration charge, are not payable by the Complainant, for the reasons elaborated herein below later and hence the Complainant wishes to state as under:

*The Complainant has been offered the "Constructive Possession" of the Unit measuring 457.75 whereas she had booked a Unit with an area of 375.48 sq. ft. and that too for "Physical Possession" of the Unit.*

*"Constructive possession is a legal fiction to describe a situation in which an individual has actual control over chattels or real property without actually having physical control of the same assets."*

- k. The Complainant wishes to draw your kind attention to the discussions the complainant had with the respondent at the time of booking when it was clearly specified that what the complainant needs is a physical possession to which you had agreed as well. The respondent had to send the complainant a Unit Buyer's Agreement, which unfortunately has never been sent by the respondent till date in spite of the repeated requests of the complainant. However, the Unit Buyer's Agreement handed over by the respondent to another client of theirs, wherein at Page No.12 Para No. 12 it has been specifically mentioned as under:

*"That the Allottee shall be handed over the **physical possession** of the Unit from the Company only after **the Allottee has discharged all his obligation and the entire Total Price** (including interest due, if any thereon) against the Unit has been paid and the Conveyance Deed has been executed and registered in his favour. The Company shall hand over the possession of the Unit to the Allottees not in default of any of the terms and conditions of this Agreement and has complied with all provisions of the Unit Buyer's Agreement."*



- l. In view of above, what has to be handed over to the complainant is the Physical Possession and not the Constructive Possession. The Promoter/Builder has altered the layout and location of the said unit without taking the prior permission from the requisite authorities and the complainant. The Promoter/ Builder is guilty of deceiving the complainant, as the original layout plan that was shown at the time of the execution of the Unit Buyers' Agreement hasn't been complied with and the entire area of the Unit of the complainant has been increased drastically from 375.48 Sq. Ft to 475.00 Sq. Ft.
- m. The grievance of the Complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the company M/s Advance India Projects Limited in regard to the unit offered to the complainant including few demands which are not as per the commitment made at the time of booking of the Unit to the complainant and hence are unjustified and illegal. It appears that the Unit Buyer's Agreement has not been intentionally provided to the complainant in spite of complainant's repeated request as possibly the respondent is aware of the fact that the delivery schedule has to be mentioned in the Unit Buyer's Agreement and the Unit has to be delivered within the time schedule to be mentioned in the Unit Buyer's Agreement hence delaying the Unit Buyer's Agreement or not providing the Unit Buyer's Agreement can only benefit the Respondent and not the complainant. Fortunately, in cases where no Unit Buyer's Agreement have been sent to the allottees intentionally for the reasons elaborated above, the Honourable

Courts have taken decision that the date of the Unit Buyers Agreement would be considered same as other allottees who are placed in similar conditions.

- n. There is no second thought to the fact that the complainant has paid total payment of Rs. 16, 52,844.64 as per details attached with the offer of possession. That the grievances of the Complainant relate to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the company M/s Advance India Project Limited with regard to the Unit offered to them. Even after taking Rs. 16, 52,844.64 as the payments, the builder, after a delay of considerable amount of time with no possible date of delivery, no Unit Buyer's Agreement has now offered the constructive possession, whereas the complainant has opted for the Physical possession.
- o. As the Respondent has failed to offer timely possession to the complainant, as is evident from the other Unit Buyer's Agreement of the allottees who are placed in similar conditions, which is in violation of obligation of the respondent under Section 11(4) (a) of the RERA Act, thus the respondent is liable to pay interest at the rate prescribed which shall be the State Bank of India, Highest Marginal Cost of Lending Rate Plus 2%, which comes to 10.05, on the amount paid by the complainant for every month of delay from the due date of delivery of possession as per Section 18(1) of the proviso of the Act read with rule 15 of the Haryana Real Estate (Regulation & Development) Rules 2017.
- p. The grievance of the Complainant is that as per many judgments of Honorable HARERA, the complainant is entitled for delayed

possession charges at prescribed rate of interest from due date of possession till offer of possession. The Respondent company has demanded a labor cess of Rs. 9500.00 from the complainant. The Complainant wishes to that this amount is unjustified and illegal and therefore not payable by the Complainant. The respondent has stated at Annexure 1 of the offer of possession that, 12 months of advance maintenance charges amounting to Rs. **55,095.00** has to be paid by the complainant.

- q. The Respondent has raised an unjust and illegal demand of the Sinking Fund Amounting to Rs. 81,022.00 on the Complainant, which the responded has no legal right to ask for, as the same was never a part of Unit Buyer's Agreement of the allottees placed in similar conditions as the Complainant. It is the obligation of the Promoter under the Haryana Apartment Ownership Act, 1983 to handover the possession of the undivided common area and the maintenance of the complex to an Apartment Owners Association immediately on formation of the Apartment Owners Association.
- r. Apart from the above, the following charges levied by you are not a part of the UBA as provided to the allottees placed in similar conditions and hence are not payable at all.
- Electrical Switch In Charges Station and Deposit Charges- Rs.57,831.00
  - Sewage/Storm Water/ Water Connection -Rs.6,482.00
  - Infrastructure Augmentation charge of Rs. 7400.71
  - Electrical Meter Charges- Rs 9,440.00
  - Registration charge of Rs. 25,003.00
  - PNG Charges- Rs. 14,672.75

- PNG Security Deposit- Rs. 10,374.00
  - Access Control charge of Rs. 6,379.25
- s. As mentioned above the Honorable HARERA Authority in several matters has passed orders which mandate that the Allottees are not liable to make any payments that were not a part of the Builder Buyer Agreement. Since the above-mentioned charges haven't been specifically mentioned in the Unit Buyer's Agreement as provided to other allottees placed in similar conditions, these charges are unjust, illegal and unmaintainable.
- t. That a huge amount of interest is payable by the respondent to the Complainant as per the details given from the due to the inordinate amount of delay that has been caused of possession till the valid Offer of Possession and the Hon'ble HRERA, in all such matters, orders that any payment to be made to the Builder has to be made after adjustment of the interest for the delayed period.
- u. The Complainant after losing all the hope from the Respondent Company, after being mentally tortured and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s).
- a. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to give actual physical possession of the complainant's booked super Area if the respondent is not able to hand over the originally booked area, then, the Hon'ble Authority be pleased to order the respondent to refund the total amount paid by the complainant (without any deduction) to the

respondent along with the interest from the date of each payment till the realization of the money.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent .**

6. The respondent has contested the complaint on the following grounds.
  - a. That the respondent is a reputed real estate developer having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. That the complainant, after checking the veracity of the project namely, 'AIPL Joystreet, Sector 66, Gurugram had applied for allotment of a unit vide the Booking Application Form. The complainant agreed to be bound by the terms and conditions of the documents executed by her.
  - b. That based on it, the respondent vide its allotment offer letter dated 05.06.2018 allotted to the complainants Unit no. SF/SEN-31 having tentative super area of 375.48 sq. ft. for a sale consideration of Rs. 36,99,979.92/- (exclusive of the registration charges, stamp duty, service tax and other charges).
  - c. That as per the terms of the allotment, it was agreed that time is the essence with respect to the due performance by the complainant under the Agreement and more especially timely payment of instalments towards Sale consideration and other charges, deposits and amounts payable by the complainants. It is important to mention here that it was acknowledged by the

complainant that the unit was purchased not for the purpose of self-occupation and use by the complainant but was for the purpose of leasing to third parties. The complainant had purchased the said unit on assured return basis, and she used to get the same every month from the respondent. The complainant has already earned huge amount as assured return from the respondent. The complainant had chosen the said unit for investment as they were interested in getting return on their investment. The complainant had agreed to pay the total sale consideration along with other charges.

- d. That on account of certain force majeure circumstances such as construction ban, due to Court Order/ Governmental Authority guidelines, the assured return could not be paid by the respondent to the complainants from 1st November 2019 till 5th December, 2019 and the same was intimated to the complainants by the respondent vide its letter dated 30.11.2019.
- e. That the constructive possession of the unit in question was to be handed over to the complainant strictly as per the terms of the allotment. It is submitted that as per Clause (j) of the Booking Application Form, "The company shall subject to force majeure conditions propose to handover possession of the unit on or before 31st December, 2022 notified by the Promoter to the Authority at the time of registration of the Project under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 and regulations made thereunder for completion of the project or as may be further revised/approved by the Authorities."

- f. That although the implementation of the project in question was affected, yet the respondent completed the construction of the project and applied for the grant of Occupation Certificate on 16.07.2020 which was granted by the concerned authorities on 28.09.2020. That the respondent raised the payment demands dated 01.10.2020 for the net payable amount of Rs. 55,22,484.71. However, despite reminders dated 23.10.2020 and 13.01.2021, the complainant failed to remit the due amount.
- g. That the respondent has already offered the constructive possession of the unit to the complainant on 01.10.2020 and as per the statement of account huge amount is still payable by the complainants to the respondent. It was informed to the complainant vide the said offer that she is bound to complete the documentation formalities and make payment towards the outstanding amount by 16.10.2020 and any delay in doing so would attract Holding charges as per the terms of the allotment. However, the complainant has failed to do the needful and the respondent has been constrained to issue a pre-termination letter dated 16.01.2021 to the complainant.
- h. That it is submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that her calculations have gone wrong on account of severe slump in the real estate market and the complainant now want to unnecessarily harass, pressurize and blackmail the respondent by filing such baseless, false and frivolous complaint. Such malafide tactics of the complainant cannot be allowed to succeed.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
8. The complainant as well as respondent have filed the written submissions dated 22.08.2024 & 16.09.2024 respectively which are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

**E. Jurisdiction of the authority**

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....  
(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case



*may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

12. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I. Objection regarding maintainability of complaint on account of complainant being investor**

13. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer, and they have paid a considerable amount to the respondent-promoter towards purchase of unit in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may*

*be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent"*

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

**G. Findings on the relief sought by the complainants.**

**F.I. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to give actual physical possession of the complainant's booked super Area if the respondent is not able to hand over the originally booked area, then, the Hon'ble Authority be pleased to order the respondent to refund the total amount paid by the complainant (without any deduction) to the respondent along with the interest from the date of each payment till the realization of the money.**

15. The complainant on 11.01.2018 applied for the allotment for unit in the project "AIPL Joy Street". The respondent company allotted a super area admeasuring 375.48 sq. ft. approx. in Flea Market bearing no. SEN-31 on second floor vide allotment letter dated 05.06.2018. The complainants had paid an amount of ₹ 16,52,844/- against the sale consideration of ₹ 45,10,668/- as per the statement of account dated 01.10.2020. Since no BBA has been executed between the parties therefore the due date of possession shall be calculated as per clause j

of the application form dated 11.01.2018. As per clause j of the application form the respondent was obligated to handover the possession of the unit on or before December 2022. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 30.06.2023.

16. That the respondent issued the intimation of offer of constructive possession on 01.10.2020 along with the demand of ₹ 36,21,337/- on account of sinking fund, CAM Charges, Labour cess etc. after receiving the occupation certificate from the competent authority on 28.09.2020. The complainant filed the present complaint seeking relief delay possession charges and possession of the unit with originally allotted area and if the same is not deliverable the complainant chose to withdraw from the project. The complainant in its complaint stated that the respondent at the time of offer of constructive possession increased the area of the unit by 21% approximately and the same is not acceptable to the complainant. Therefore, is seeking refund of the full amount paid along with interest under section 18 of the RERA Act, 2016.
17. The authority in the instant matter observes that as per section 14(2)(i) of Act of 2016, the promoter is under obligation to take previous consent of the allottee for any addition and alteration in the sanctioned plan, layout plans & specifications in respect of the allotted unit. Furthermore, section 14(2)(ii) obligates the promoter to take previous written consent of the two third allottees in case there is any alteration or addition in the sanctioned plans, layout plans and

specifications of the building or the common area within the project.

The relevant section is produced below for ready reference:

*"Section 14*

*(1).....*

*(2)....*

*(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:*

*.....*

*(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building."*

18. Also, the statutory right for refund of paid-up amount of an allottee accrue under section 18(1)(a) of the Act, 2016 if the promoter fails to complete or is unable to give the possession of the unit in accordance with the terms of the agreement for sale or as the case may be. The relevant section is produced below for ready reference:

*"Section 18*

*If the promoter fails to complete or is unable to give possession of an apartment, plot or building, —*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act"*

19. In the present case no BBA has been executed between the parties but since the respondent has issued an allotment letter dated 05.06.2018

and the same has been agreed and accepted by the complainant therefore, it is deemed that both the parties have agreed to the terms of allotment and the application form thereof. This Authority is of the view that since the respondent promoter does not take prior consent of the allottee for increasing the area of the allotted unit and also the respondent failed to deliver the possession of the unit as agreed i.e., of originally allotted area. It is also pertinent to mention that the allotment letter was issued by the respondent company on 05.06.2018 i.e., after coming into force of RERA Act, 2016 accordingly, it is evidently clear from the conduct of the respondent that it had wilfully ignored the obligations as cast upon it under section 14 as a result of which the complainant become entitled to his right under section 18(1) & 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.

20. **Admissibility of refund along with prescribed rate of interest:** The complainant allottee is seeking refund of the amount paid by him along with interest as he intends to withdraw from the subject project. Accordingly, proviso to section 18 provides that where an allottee intends to withdraw from the project, he shall be returned the complete amount paid by him to the promoter along with interest at such rate as may be prescribed, and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under.

***\*Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

***(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate***

*prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"*

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
23. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed.

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to*

*withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

24. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed. This is without prejudice to any other remedy available to the allottee including compensation for which he may file an application for adjudging compensation with the adjudicating officer under section 71 read with section 31(1) of the Act of 2016.
25. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to refund of the entire amount paid by him along with interest at the rate of 11.10% per annum (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.


#### **H. Directions of the authority**

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The respondent is directed to refund the paid-up amount of ₹16,52,844/- along with the interest at the prescribed rate i.e., 11.10% from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the rules, 2017.
- b. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024